



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

October 10, 1990

Ms. Mary Ann Courter
Legal Counsel
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR90-482

Dear Ms. Courter:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned RQ-2001 (ID# 6759).

You have submitted for consideration several categories of information. The first category, identified as your attachment B, is a compilation of criminal history information concerning an individual, not the requestor. Such criminal history information, so called "rap sheets," are confidential. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (1976).

As Exhibit C, tab #1, you have submitted a computer printout listing the home address and telephone number of a former Department of Public Safety (DPS) officer. You seek to delete the home address and telephone number before you release the printout. You may do so. Section 3(a)(17) of the Open Records Act excepts that information from public disclosure.

You have submitted as Exhibit C, tab #3, certain records that you claim are excepted from disclosure under section 3(a)(1) of the act, in conjunction with V.T.C.S. article 4495b, section 5.08. Section 5.08(b) provides:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and

may not be disclosed except as provided in this section.

That section, in conjunction with section 3(a)(1), provides a basis for withholding certain medical records held by government bodies. Open Records Decision No. 482 (1987). The materials in Exhibit C, tab #3, are medical records of diagnosis and treatment created or maintained by a physician. Further release would not be consistent with the purposes for which the records were originally obtained by the DPS. See V.T.C.S. art. 4495b, § 5.08(c), (j)(3). Accordingly, they may not be released. Open Records Decision No. 565 (1990).

Exhibit C, tab #2, is a report from a polygraph examiner showing the results of a polygraph examination. You correctly suggest that the information is protected from disclosure by section 3(a)(1) of the act and V.T.C.S. article 4413(29cc), section 19A. See also Open Records Decision No. 565 (1990).

You have submitted for our inspection certain agency memoranda. You assert that such material is protected from disclosure by section 3(a)(11) of the act. You say that the memoranda contain "advice, opinion and recommendations to such a large extent and are so inextricably entwined with references to the factual matters at issue that they fall within the [section] 3(a)(11) exception to public disclosure." Section 3(a)(11) of the act was intended to protect from disclosure to the public advice, opinion, and recommendation used in the decision-making process within an agency or between agencies. See, e.g., Open Records Decision No. 549 (1990). The purpose of the protection is to foster open and frank discussion in the deliberative process. Information that is purely factual may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). We have reviewed the information submitted as agency memoranda and have determined that most of the material must be disclosed because it is objective observation of fact. We have marked that portion which is advice, opinion, and recommendations and which may therefore be withheld.

Finally, you ask whether certain witness statements are excepted from disclosure under the informer's privilege. The statements in question were made by public officers and employees to the Internal Affairs Division of DPS in connection with an internal investigation. Section 3(a)(1) excepts from disclosure information deemed confidential by Constitutional or statutory law or judicial decision. The

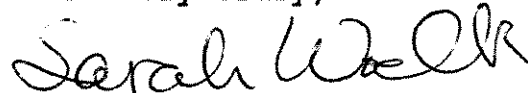
informer's privilege is a well-established section 3(a)(1) exception to the general rule requiring disclosure and has been recognized by this office in numerous published opinions. See e.g., Open Records Decision Nos. 515 (1988); 279 (1981) (and authorities cited therein).

The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. Moreover, the basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. Id.

Neither cases nor opinions have extended the informer's privilege to protect the identities of public employees making statements about the routine conduct of the business of government. Furthermore, the policy underlying the informer's privilege does not support extending the privilege to cover statements such as these made by public employees about public business.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-482.

Yours very truly,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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Ref.: ID# 6759 (RQ-2009)

Enclosures: Documents Submitted

cc: Lorraine Adams
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